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UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

MARY ANN SUSSEX; et al.,  
v.  
Plaintiffs,  
TURNBERRY/MGM GRAND  
TOWERS, LLC, et al.,  
Defendants.  
Case No.: 2:08-cv-00773-MMD-PAL  
MOTION FOR AN ORDER  
DECLARING THAT  
ARBITRATOR BRENDAN HARE  
IS DISQUALIFIED FOR HIS  
FAILURE TO MAKE REQUIRED  
DISCLOSURES UNDER NRS  
38.227 THAT ESTABLISH HIS  
EVIDENT PARTIALITY  
AND  
REQUEST FOR ORAL  
ARGUMENT

1           **I. INTRODUCTION.**

2           **A. The Novel Question Addressed by This Motion.**

3           This motion presents an unprecedented question to the Court:  
4           Does the Federal Arbitration Act prohibit removal of Arbitrator Brendan  
5           Hare whose disqualifying evident partiality has been established, as a  
6           matter of law, prior to arbitration on the merits and entry of a final award?  
7           Ninth Circuit precedent suggests the answer to this question is "no." *Aerojet-*  
8           *General Corp. v. Am. Arbitration Ass'n*, 478 F.2d 248, 251 (a determination by  
9           the AAA deemed "final and binding" under its administrative rules may be  
10           subject to pre-award judicial review if it is not made "in accordance with a  
11           minimum standard of fair dealing" and "may cause irreparable harm to one  
12           or more of the parties"). "[T]he courts should be free to prevent a manifest  
13           injustice," *id.*, such as a second arbitration because the first arbitration went  
14           to final award, with the AAA's blessing, under an arbitrator whose evident  
15           partiality has been established pre-award as a matter of law.

16           It would be an injustice in this case—and contrary to due  
17           process—to support continuing the disqualified arbitrator in office to enter a  
18           final award sometime in the future that could not be confirmed because of  
19           his established bias against Turnberry/MGM Grand Towers, LLC  
20           ("Turnberry/MGM"). This would be the antithesis of the "basic purpose of  
21           arbitration [which] is the speedy disposition of disputes without the expense  
22           and delay of extended court proceedings." *Id.* Arbitrator Brendan Hare  
23           should be removed now, so a neutral arbitrator can address the merits in  
24           one, not in the second of two arbitrations.

25           **B. The Arbitrator's Bias Acknowledged in State and Federal  
26           Courts Makes This an Extreme Case Qualified for Pre-Award  
27           Judicial Review.**

28           This is not a routine bilateral arbitration; it involves 545  
claimants drawn from several state and federal court actions commenced by

1 the same lawyers. One of the cases involves the 8 plaintiffs in this *Sussex*  
2 case. All of the plaintiffs in all of the cases allege they were purchasers of  
3 condominiums at The Signature at MGM Grand in 2006 and 2007. They  
4 allege they were tricked into buying by fraudulent misrepresentations of the  
5 seller, Turnberry/MGM. They collectively make 13,080 claims against 7  
6 corporate defendants, only one of which—Turnberry/MGM—is a party to  
7 the arbitration agreement that underlies arbitration. The arbitrator was  
8 appointed by the AAA after this Court ordered the 8 plaintiffs in this case to  
9 arbitrate. Recently, however, the arbitrator, over Turnberry/MGM's  
10 objections, consolidated all claims made by all plaintiffs in all courts, state  
11 and federal, bringing the total number of claimants to 545. This mass  
12 consolidated arbitration is known as the *Sussex* arbitration.

13 It will take years to bring this mass arbitration to conclusion  
14 under disqualified Arbitrator Hare only to start over when his award is  
15 vacated for evident partiality that has been established as a matter of  
16 Nevada law. There is no question, as recognized by state court Judge Mark  
17 Denton, that Arbitrator Hare failed to disclose at the time of his  
18 appointment in the *Sussex* arbitration in February 2012 and thereafter that in  
19 2011 he "refocused his practice" to begin actively promoting a new personal  
20 plaintiffs' litigation financing business aimed at investing in mass claimant  
21 litigation, such as the 545-party *Sussex* arbitration, by financing  
22 "claimholders and their counsel" in the "advancement and resolution of  
23 claims and litigations."

24 Judge Denton found this undisclosed activity to be a material  
25 non-disclosure that establishes Brendan Hare's disqualifying "evident  
26 partiality" as a matter of governing Nevada law. *Thomas v. City of North Las*  
27 *Vegas*, 122 Nev. 83, 127 P.3d 1057 (2006); NRS 38.241.1(b). When presented  
28

1 with Turnberry/MGM's motion to disqualify Arbitrator Hare in his state  
 2 court, Judge Denton asked:

3 **why does it make any sense, if the failure to disclose is  
 4 manifest, and if its legal effect is made clear by Nevada law,  
 5 for Defendant to have to go through lengthy and expensive  
 6 proceedings when, at the outset, it has raised and intends to  
 7 preserve the non-disclosure issue?**

8 Decision and Order dated May 10, 2013 ("D & O"), Appendix<sup>1</sup> at TMGM 251  
 9 (emphasis added). (The state court case before Judge Denton is comprised  
 10 of 160 plaintiffs who are also claimants in the *Sussex* arbitration. Judge  
 11 Denton's case is referred to as the *KJH* case.)

12 United States District Judge James Mahan also pointed this out  
 13 during a recent status conference in the *Abraham* case before him (comprised  
 14 of 397 plaintiffs who are also claimants in the *Sussex* arbitration) when he  
 15 said the time to disqualify Arbitrator Hare is "*now, not wait until he makes an  
 16 award. . . .*" *Abraham* Tr. of May 20, 2013, status check, Dkt. No. 59, at 6:4-10,  
 17 TMGM 263 ("if I were in . . . the defendants' position . . . *the time to disqualify  
 18 the arbitrator is now, not wait until he makes an award. . . I mean when else are  
 19 you going to make a motion to disqualify?*") (emphasis added).<sup>2</sup>

20 These established facts and comments by two distinguished  
 21 judges make this an unprecedeted and extreme case that warrants pre-  
 22 award equitable relief under *Aerojet-General, supra*, to prevent a resource-  
 23 wasting and useless arbitration under a disqualified arbitrator.

24  
 25  
 26 <sup>1</sup> The Appendix hereto has been Bates numbered TMGM 1-512.

27  
 28 <sup>2</sup> Turnberry/MGM is concurrently filing a motion in *George Abraham et al. v. Turnberry/MGM et al.*, Case No. 2:11-cv-01007-JCM-NJK, asking for the relief it seeks here. It might advance judicial economy if the Courts would hear these motions together.

1                   **C.     Judicial Review and Action are Warranted Now.**

2                   The Court should exercise its equitable authority to disqualify  
3 Arbitrator Hare *now*. His evident partiality does not diminish or disappear  
4 depending on whether the plaintiffs were compelled to arbitrate by a state  
5 or a federal court. *All* parties in arbitration that has not gotten underway  
6 should be protected from the colossal waste of time and resources that will  
7 be occasioned if the disqualified Arbitrator is permitted to proceed to a final  
8 award for some claimants that could not be confirmed because of his  
9 established violations of the disclosure requirements of NRS 38.227. No  
10 discovery has taken place in any case or arbitration. Only procedural orders  
11 have been entered to date by Arbitrator Hare in the *Sussex* arbitration, thus  
12 making this motion particularly timely and meritorious. *See Metropolitan*  
13 *Prop. & Cas. Ins. Co. v. J.C. Penney Cas. Co.*, 780 F. Supp. 885, 894 (D. Conn.  
14 1991) (**if "the court grant[s] relief only after arbitration concludes . . . the  
15 parties will then have to go through the entire arbitration process all over  
16 again before a different arbitra[tor]. . . "**) (emphasis added).

17                   To provide context for the arbitrator's disqualification and  
18 establish a full record for the "extreme case" scenario that *Aerojet-General*  
19 requires for "judicial review prior to the rendition of a final award,"  
20 Turnberry/MGM provides in the next section the history that supports this  
21 motion.

22                   **II.    FACTUAL AND PROCEDURAL BACKGROUND.**

23                   The consolidated mass arbitration that underlies this motion  
24 began as several civil actions filed in the Clark County District Court and in  
25 this federal court on behalf of purchasers of luxury residential  
26 condominiums, known as the Signature Condominiums at MGM Grand.  
27 The Signature Condominiums were developed and sold by  
28 Turnberry/MGM under a common Condominium Purchase and Sale

1 Agreement (the "PSA"). TMGM 496-508. In a nutshell, the plaintiffs in all  
 2 cases seek the same relief: rescission of their PSAs and/or money damages  
 3 for a variety of alleged "frauds" allegedly committed by Turnberry/MGM in  
 4 presenting the Signature Condominiums that induced them to purchase  
 5 under the PSA.

6 **A. The *KJH* State Case.**

7 The first Signature case, *KJH Investor Group, LLC, et al. v.*  
 8 *Turnberry/MGM Grand Towers*, Case No. A547024 ("KJH"), was filed on  
 9 August 27, 2007, in the Clark County District Court. TMGM 1-2. Over the  
 10 next several years, seven additional cases were filed on behalf of groups of  
 11 plaintiffs, all of them by the same counsel.<sup>3</sup> One of these seven cases, a  
 12 putative class action by 8 parties, *Mary Ann Sussex, et al., v. Turnberry/MGM*  
 13 *Grand Towers, LLC*, Case No. A557730 (the "Sussex" action), was removed to  
 14 this Court in June 2008. TMGM 5-10.

15 The *KJH* action in state court originally included 47 plaintiffs, all  
 16 of whom were compelled to arbitrate their claims in February of 2008 by  
 17 District Judge Mark Denton. But *after* they and the plaintiffs in the six other  
 18 state court cases initiated arbitration in September of 2009 (known as "the  
 19 *KJH* arbitration"), their common attorneys filed a First Amended  
 20 Consolidated Complaint (the *KJH* "FACC") in state *court*, on behalf of 160  
 21 plaintiffs. *See* FACC, TMGM 36-41 (excerpt). Of these plaintiffs, 148 were  
 22 plaintiffs in the six state court cases. Twelve of the 160, however, were not  
 23

24 <sup>3</sup> *Sussex v. Turnberry/MGM Grand Towers, LLC* ("Sussex"), Case No. 2:08-cv-  
 25 00773-MMD-PAL; *Berkeley v. Turnberry/MGM Grand Towers, LLC*, Case No.  
 26 A565873, filed on June 20, 2008; *Brown v. Turnberry/MGM Grand Towers,*  
 27 *LLC*, Case No. A569825, filed on August 18, 2008; *Shim v. Turnberry/MGM*  
 28 *Grand Towers, LLC*, Case No. A573280, filed on October 9, 2008; *Linares v.*  
*Turnberry/MGM Grand Towers, LLC*, Case No. A574558, filed on October 28,  
 2008; *Louie v. Turnberry/MGM Grand Towers, LLC*, Case No. A577034, filed on  
 December 4, 2008; and *Sherman v. Turnberry/MGM Grand Towers, LLC*, Case  
 No. A581851, filed on February 4, 2009. TMGM 3-13; 17-30 (excerpts only).

1 plaintiffs in any lawsuit; they were then (and are now) claimants in the  
 2 *Sussex* arbitration, discussed next.

3 **B. This *Sussex* Case.**

4 This *Sussex* case pending before the Court consists of 8 plaintiffs  
 5 who purchased 6 Signature condominiums. *See* Amended Federal Class  
 6 Action Complaint, Dkt. No. 14, TMGM 14-16 (excerpt). The Honorable  
 7 Roger L. Hunt compelled them to arbitration against Turnberry/MGM in  
 8 June 2009 based on the arbitration agreement in the PSA. TMGM 31-32.  
 9 Thereafter, the 8 *Sussex* plaintiffs together with 12 plaintiffs named in the  
 10 *KJH* FACC filed a class arbitration demand in August 2009, TMGM 33-35  
 11 (excerpt only), which the Arbitrator denied and dismissed. TMGM 43-66.

12 **C. The Federal *Abraham* Case Before Judge Mahan.**

13 On June 21, 2011, the attorneys for the *KJH* and *Sussex* plaintiffs  
 14 filed their latest lawsuit in federal court on behalf of 397 plaintiffs, *George*  
 15 *Abraham et al. v. Turnberry/MGM et al*, Case No. 2:11-cv-01007-JCM-NJK (the  
 16 "Abraham Action"). TMGM 73-81 (excerpt only). (Thirty-one of these 397  
 17 plaintiffs are also named plaintiffs in the *KJH* action; 5 of those 31 were  
 18 already claimants in the *Sussex* arbitration; and 2 of the remaining *Abraham*  
 19 claimants were already named claimants in the *Sussex* arbitration.<sup>4</sup> The

21 <sup>4</sup> The 31 *Abraham* Plaintiffs who are also *KJH* plaintiffs are: Christina Kim;  
 22 Nurham Celik; Markar Karatas; Les Krieger; Rebekah Krieger; Bernard  
 23 Klouda; Benjamin Rudnitsky; Tamar Rudnitsky; Pierre Bain; Marietta Bain;  
 24 Solip, LLC; Steven Guyon; Lee Pritzel; Marco Gonzalez; Jose Sanchez;  
 25 Leonardo Barerra; Gloria Barerra; Myung Ya Cho; Eugene Ohta; Fouad  
 26 Fegahli; Charles Lesko; Richard Feldman; LV700, LLC; Bassilios Petrakis;  
 27 Sherene Tang; Juan Medina; Clarissa Medina; Ronald Perkins; Shauna  
 28 Perkins; Rafik Bakopian; and Amin Rahim. *Compare Abraham* First Am.  
 Compl., Dkt. No. 13 at 2-5 (caption), *with* FACC, TMGM 36-41 (excerpt) at 1-  
 3 (Caption). The 7 *Abraham* plaintiffs who were already among the 20  
 original *Sussex* claimants are Jose Sanchez, Fouad Fegahli, Bassilios Petrakis,  
 Ronald Perkins, and Shauna Perkins (*Abraham*, *KJH* and *Sussex*), John  
 Hanson, Elizabeth Hanson (*Abraham*, and *Sussex*). *Compare Abraham* First

Honorable James Mahan compelled the *Abraham* plaintiffs to arbitrate their claims in September 2012. Order, Dkt. No. 55, TMGM 147-48. The *Abraham* plaintiffs, however, did not file arbitration demands. Their attorneys named them as claimants in an amended consolidated complaint filed in the *Sussex* arbitration. TMGM 176-89 (excerpt).

**D. The Recently Consolidated Mass *Sussex* Arbitration.**

In April 2012, after failing in their effort to arbitrate as a class, the 20 original *Sussex* claimants (the 8 *Sussex* plaintiffs plus 12 others) moved the Arbitrator to consolidate their claims with all others for a total of 545 claimants in one proceeding in order to achieve a de facto class arbitration, the *Sussex* arbitration. *See Motion to Consolidate Claims*, TMGM 145-46 (excerpts only). They argued then that consolidation would "advance the just, speedy and economic resolution of this matter" because of numerous purported "common issues" that could be decided against Turnberry/MGM by motion without discovery at all. The arbitrator agreed, and on December 31, 2012, ordered the claims of the 20 *Sussex* claimants consolidated with the claims of 525 additional claimants (including the *KJH* plaintiffs before Judge Denton) for "coordinated discovery, motion practice and rulings on common issues." *Consolidation Order*, TMGM 149-66. The Arbitrator's Consolidation Order not only joined claimants on whose behalf the *KJH* and *Sussex* arbitration demands were filed, the order also joined the claims of the 397 *Abraham* plaintiffs in Judge Mahan's court who had *not* filed an arbitration demand.

Thus, the problem created by Arbitrator Hare's non-disclosures, detailed below, has been significantly compounded: it will potentially affect not just one bi-lateral arbitration but several different arbitrations drawn

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Am. Compl., Dkt. No. 13, *with Sussex Arbitration Demand*, TMGM 82-91 (excerpt).

1 from federal and state courts involving hundreds of claimants that have  
2 now been consolidated.

3 **E. The Disqualification Proceedings in the *KJH* Case.**

4 On April 24, 2013, Turnberry/MGM filed a motion in the *KJH*  
5 case seeking the removal of Brendan Hare for his failure to make disclosures  
6 required by Nevada law. In assessing the merits of the motion, Judge  
7 Denton pointed out that the 160 *KJH* plaintiffs did "not provide a persuasive  
8 argument that the Arbitrator need not have made the disclosures." D & O at  
9 6-7, TMGM 250-51. Their principal objection was that the district court  
10 lacked authority to disqualify the Arbitrator before a final award. *Id.* at  
11 TMGM 253. Although their attorneys sought to enjoin Judge Denton from  
12 entertaining the motion by filing a motion for temporary restraining order in  
13 this *Sussex* action, this Court denied their motion by order dated May 1,  
14 2013. TMGM 240-44.

15 After holding a hearing on Turnberry/MGM's motion, Judge  
16 Denton entered a reasoned decision and order. TMGM 245-57. The court  
17 agreed with Turnberry/MGM that: (1) an "indirect positional conflict" due  
18 to an arbitrator's "attitudinal disposition" can be "within the ambit of evident  
19 partiality resulting from the non-disclosure itself. . . ."; (2) the arbitrator's  
20 non-disclosure of his litigation funding business is not excused or covered  
21 by his disclosure of the types of cases he has handled; and (3) the fact that  
22 the arbitrator has not yet generated revenue from his litigation funding  
23 business does not "negate the fact that the Arbitrator has put himself in the  
24 market to generate that type of business." D&O at 4:3-16, TMGM 248.

25 Judge Denton rejected one by one the *KJH* plaintiffs' arguments  
26 against pre-award disqualification of Arbitrator Hare. First, he pointed out  
27 that the plaintiffs have virtually conceded that the arbitrator should have  
28

1 disclosed his new disqualifying plaintiffs' litigation financing business  
 2 venture. *Id.* at 6:21-7:2, TMGM 250-51.

3 Second, he dealt with the absence of prejudice to the plaintiffs if  
 4 Arbitrator Hare is replaced with an unbiased arbitrator:

5 [T]he Court discerns nothing concrete in Plaintiffs' Opposition  
 6 to the effect that attending to the disqualification issue now,  
 7 before an arbitrator with 'evident partiality' undertakes  
 8 hearing an enormous, multi-party case, will cause actual  
 9 prejudice to Plaintiffs that would outweigh Defendant's right  
 10 to be assured of a neutral arbitrator going into the proceedings.  
 11 [] In this regard, why does it make any sense if the failure to  
 12 disclose is manifest, and if its legal effect is made clear by  
 13 Nevada law, for Defendant to have to go through lengthy and  
 14 expensive proceedings when, at the outset, it has raised and  
 15 intends to preserve the non-disclosure issue?

16 *Id.* at 7:3-16, TMGM 251(emphasis added).

17 Third, Judge Denton also disagreed with the *KJH* plaintiffs that a  
 18 pre-award proceeding for disqualification would open flood gates of  
 19 litigation. Quite the opposite: pre-award disqualification would actually  
 20 prevent post-award litigation by a "disgruntled party seeking to invalidate an  
 21 award based upon an undisclosed relationship." D & O at 8:14-28 and n. 5,  
 22 TMGM 252 (internal quotations omitted).

23 Fourth, the district court pointed to NRS 38.222(2)(b), which  
 24 invests the court with jurisdiction to impose provisional remedies for urgent  
 25 matters that the arbitrator cannot address. *Id.* at 9:1-8, TMGM 253.

26 In the end, however, Judge Denton concluded that "there is no  
 27 Nevada statutory or case law (such as *Aerojet-General*) that authorizes  
 28 judicial, pre-award intervention for disqualification purposes" where the  
 parties agreed that the AAA's decision on disqualification shall be  
 "'conclusive'... for purposes of allowing the proceedings to go forward to  
 an award." D&O at 9:9-17, TMGM 253 (citing AAA Rule R-17(b)). But he  
 nevertheless found the issue "to be *extremely important* and timely in view of

1 the increasing use of arbitration in resolution of commercial disputes . . .,"  
 2 and entered a temporary restraining order enjoining the arbitrator for 30  
 3 days "from engaging in further arbitration proceedings" for the specific  
 4 purpose of allowing Turnberry/MGM to bring this issue before "the Nevada  
 5 Supreme Court." D&O at 10:4-16, TMGM 254 (emphasis added), by way of  
 6 a writ petition.

7 **F. The Writ Petition to the Nevada Supreme Court Prompts the**  
**8 160 *KJH* Plaintiffs, Which Include 31 *Abraham* Plaintiffs and**  
**9 12 *Sussex* Claimants, to Concede the Arbitrator's**  
**Disqualification.**

10 Turnberry/MGM filed a petition for writ of mandamus on  
 11 May 30, 2013. Ten days later, the Nevada Supreme Court issued an order  
 12 directing the *KJH* plaintiffs to file an answer because it appeared to the  
 13 Supreme Court that "petitioner has set forth issues of arguable merit and  
 14 that an answer to the petition is warranted." Order Directing Answer and  
 15 Granting Temporary Stay ("Order"), TMGM 321-24.

16 In response to the Order, the *KJH* plaintiffs filed two motions:  
 17 (1) a Motion for Reconsideration in the district court, asking Judge Denton to  
 18 lift the stay he imposed so they could submit a proposed order to the  
 19 challenged arbitrator undoing the consolidation he ordered at their request  
 20 in January so the *KJH* claimants could "proceed separately with their own  
 21 arbitration with a new arbitrator," TMGM 328-34; and (2) an "Emergency  
 22 Motion under NRAP 27(e)" in the Nevada Supreme Court, in which they  
 23 "agree[d] to proceed *without* Arbitrator Hare in their proposed new  
 24 arbitration so that the other plaintiffs in the federally-ordered *Sussex* AAA  
 25 Arbitration ("Federal Plaintiffs") . . . can proceed with their arbitration"  
 26 before the disqualified arbitrator. Emergency Motion at 1, TMGM 343.

27 The Nevada Supreme Court granted the Emergency Motion and  
 28 dismissed the writ petition based on the *KJH* plaintiffs' purported

1 "agreement" to jettison Arbitrator Hare for them, which, it reasoned, gave  
2 Turnberry/MGM "the relief it s[ought] in this writ petition," even though  
3 Turnberry/MGM will still have to defend against the claims of 385  
4 remaining claimants before the disqualified Arbitrator. Order Dismissing  
5 Petition for Writ of Mandamus, TMGM 386-90. On July 5, 2013,  
6 Turnberry/MGM asked the Nevada Supreme Court to reconsider its  
7 decision to dismiss the writ petition. TMGM 417-33. A decision on  
8 rehearing is pending.

9 On the evening of July 1, 2013, plaintiffs' attorneys filed three  
10 separate amended complaints in arbitration with the AAA: two of them are  
11 identical, filed under the existing case number for the *Sussex* arbitration,  
12 except that one is entitled "*Sussex et al. v. Turnberry/MGM Grand Towers, LLC et al.*" and the other, "*Abraham et al v. Turnberry/MGM Grand Towers et al.*"  
13 TMGM 391-410 (excerpts only). The third was an amended *KJH* arbitration  
14 complaint to de-consolidate the 160 plaintiffs that are consolidated in the  
15 *Sussex* arbitration. TMGM 411-16 (excerpts only). All three complaints were  
16 filed "as per [the] Nevada Supreme Court['s] Order" dismissing  
17 Turnberry/MGM's writ petition, as if that Order directed or permitted the  
18 Plaintiffs to unilaterally de-consolidate the mass arbitration ordered by the  
19 Arbitrator, which the Order did not even address. These new complaints  
20 have not been entertained by the AAA.  
21

### 22 III. ARGUMENT.

#### 23 A. The Court Has Jurisdiction to Review and Remove Arbitrator 24 Hare Pre-award.

25 The Ninth Circuit Court of Appeals has held that in "extreme  
26 cases," a determination made by the AAA prior to the rendition of a final  
27 award may be reviewed to evaluate "whether that determination was made  
28 in accordance with a minimum standard of fair dealing." *Aerojet-General Corp. v. American Arbitration Assoc.*, 478 F.2d 248, 251 (9th Cir. 1973) ("Aerojet-

1       General"); accord *Pacific Reinsurance Mgmt. Corp. v. Ohio Reinsurance Corp.*, 935  
 2 F.2d 1019, 1022 (9th Cir. 1991) (citing *Aerojet-General*). In *Aerojet-General*, as  
 3 here, the parties had a contract providing for arbitration under the rules of  
 4 the AAA. A dispute arose and one of the parties, an Israeli company, asked  
 5 for arbitration in New York. Aerojet-General, an Ohio corporation that had  
 6 its principal place of business in California, objected to the New York venue.  
 7 The AAA, however, concluded that the arbitration should be held in New  
 8 York, because it was a central point between California and Israel and  
 9 equally accessible to both parties. *Aerojet-General*, 478 F.2d at 249-50 and n.  
 10 2. Under the AAA Commercial Arbitration Rules, the AAA's decision to  
 11 assign New York as the hearing locale was "final and binding." *Aerojet-*  
 12 *General*, 478 F.2d at 250 n.1 (quoting a former version of AAA Commercial  
 13 Rule R-10). Aerojet-General, however, filed suit in the district court in  
 14 California and obtained a temporary restraining order enjoining the AAA  
 15 arbitration in New York.

16       On appeal, the Ninth Circuit discussed two points that are of  
 17 significance to this motion: first, the Court of Appeals did *not* foreclose  
 18 judicial scrutiny of arbitration proceedings prior to a final award.<sup>5</sup> *Aerojet-*  
 19 *General*, 478 F.2d at 251. Second, it did *not* "feel that the language in [AAA  
 20 Commercial Arbitration Rule 10] that its determination as to locale is "final  
 21 and binding" precluded a limited inquiry into whether that determination

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22       <sup>5</sup> The Seventh Circuit has held, as this Court acknowledged in its May 1,  
 23 2013, order denying plaintiffs' motion to enjoin the *KJH* court from  
 24 considering the disqualification of Arbitrator Hare, that an arbitrator's bias  
 25 should be challenged "when the arbitration is completed and an award  
 26 rendered." Order at 4. The Ninth Circuit, however, has **not** so held, as  
 27 *Aerojet-General* indicates. *See also Pacific Reinsurance, supra*, 935 F.2d 1019,  
 28 1022 ("**i**f temporary equitable relief is to have any meaning [such as  
 removal of a disqualified arbitrator so a neutral arbitrator can be  
 appointed before arbitration on the merits gets underway], the relief must  
 be enforceable at the time it is granted, not after an arbitrator's final  
 decision on the merits").

1 was made "in accordance with a minimum standard of fair dealing." *Id.*  
 2 Such review is only foreclosed if the parties expressed a clear intention to  
 3 foreclose any pre-award review, which they did not express in *Aerojet-*  
 4 ***General or in this Sussex case:*** "Ordinary language to the effect that the  
 5 decisions of the arbitrator shall be 'final and binding' has been held *not* to  
 6 preclude some judicial review." *Id.* at 252 (emphasis added).

7 In other words, *Aerojet-General* stands for the proposition that in  
 8 an extreme case, a party aggrieved by an arbitrator's interlocutory order or  
 9 determination by the AAA can seek review from the court, even if an AAA  
 10 Rule provides that its determinations are "final" or an arbitration agreement  
 11 provides that an arbitrator's decisions are "final." *Id.* What could be more  
 12 "extreme" than an arbitrator going into the business of financing litigation  
 13 *against* corporations that appear as respondents before him, believing him to  
 14 be neutral, such as Turnberry/MGM in this case?

15 The arbitration agreement in the Signature PSA does not  
 16 foreclose pre-award review of the failure of Arbitrator Hare to disclose the  
 17 facts of his evident partiality. It merely includes the standard language that  
 18 the arbitrator's award shall be "final" and specifically says that its provisions  
 19 "shall *not* prevent any party from obtaining injunctive relief from a court of  
 20 competent jurisdiction to enforce the obligations for which such party may  
 21 obtain provisional relief pending a decision on the merits by the arbitrator."  
 22 PSA, section 24.10, TMGM 503 (emphasis added).

23 Although AAA Commercial Rule R-17(b) says the AAA's  
 24 determination as to whether an arbitrator should be disqualified is  
 25 "conclusive," TMGM 461, this does *not* preclude pre-award judicial review  
 26 under *Aerojet-General*, 478 F.2d at 251. Moreover, when the AAA  
 27 reconfirmed Arbitrator Hare, it did not say its determination was  
 28 conclusive. It said the opposite: "**the AAA will abide by an order issued**

1 by the courts, and the parties are requested to keep us informed as to the  
 2 outcome." TMGM 190 (letter from AAA Director Baglini to counsel). The  
 3 Association re-confirmed its deference to the Court on July 12, 2013 in a  
 4 letter to the parties' counsel from AAA Vice President John Bishop, who said  
 5 with regard to "continued litigation regarding the appointment of the  
 6 arbitrator . . . in any current or future court proceedings, the Association  
 7 will abide by a court order . . . ." Letter, TMGM 435. Because no discovery  
 8 or proceedings on the merits have taken place in the *Sussex* arbitration,  
 9 nothing of substance or policy prevents this Court from entertaining this  
 10 motion in this extreme case of established arbitrator bias and ordering  
 11 Brendan Hare's removal and replacement with a neutral arbitrator.

12 **1. What Makes This an Extreme Case that Warrants Review  
 13 Now.**

14 The AAA reaffirmed Arbitrator Hare's status without a hearing  
 15 or reason in the face of substantial proof from the arbitrator himself and  
 16 substantial legal authority that support his disqualification, including the  
 17 AAA's own Commercial Arbitration Rules and Ethical Standards.<sup>6</sup>

18 <sup>6</sup> Last week the AAA "determined that the arbitrator shall be reaffirmed in  
 19 this case." TMGM 436-37. As on previous occasions, the AAA did not give  
 20 reasons for its reaffirmation of Arbitrator Hare, nor did it afford  
 21 Turnberry/MGM a hearing, as it requested, on this very substantial and  
 22 critical issue of the Arbitrator's disqualifying bias. Speaking for the AAA,  
 23 Director Yvonne Baglini merely assured this respondent that the AAA  
 24 Administrative Review Council, "after careful consideration," would do  
 25 nothing, referring the parties to "Review Standards" on its website for  
 26 additional information. *Id.*

27 The Review Standards do not illuminate the AAA's basis for the  
 28 "reaffirmation" of Arbitrator Hare. At most, the Standards would permit  
 one to imply that pre-award removal of an arbitrator requires a "direct  
 conflict," but an indirect or positional conflict of interest, as present here,  
 must be addressed post-award, which would ensure a second, do-over  
 arbitration by a neutral arbitrator — the antithesis of efficient and fair  
 arbitration. *See* Baglini e-mail, September 4, 2013, TMGM 436-37; Review  
 Standards, TMGM 438-40; which say the AAA's decision on arbitrator

1 TMGM 190. Moreover, the Arbitrator *confirmed* his disqualifying non-  
 2 disclosure to the AAA when it received Turnberry/MGM's request to  
 3 disqualify him. TMGM 173-75.

4       Unlike the plaintiff in *Aerojet-General*, who faced just one  
 5 defendant in one case and was merely inconvenienced by having to arbitrate  
 6 in New York, Turnberry/MGM will suffer irreparable harm if Arbitrator  
 7 Hare is not removed. Without prompt relief from this Court, this  
 8 defendant/respondent has to bring to conclusion not just one arbitration; it  
 9 must defend against the claims of hundreds of claimants consolidated  
 10 before a single arbitrator whose evident partiality has been established,  
 11 *before* proceedings on the merits get underway. Arbitrating these claims to a  
 12 conclusion may take years and occasion great expense. Postponing the  
 13 biased arbitrator's disqualification until he enters an award would be a  
 14 colossal waste of time and resources, which arbitration is supposed to  
 15 prevent. *AT&T Mobility LLC v. Concepcion*, 563 U.S. \_\_, 131 S. Ct. 1740, 1749  
 16 (2011) (recognizing that speedy dispute resolution is one of the goals of  
 17 arbitration).

18       As one district court in the First Circuit pointed out  
 19 persuasively, if it is clear that a party will seek to vacate an award for the  
 20 arbitrator's partiality,

21       **... it simply does not follow that the policy objective of an  
 22 expeditious and just arbitration with minimal judicial  
 23 interference is furthered by categorically prohibiting a court  
 24 from disqualifying an arbitrator prior to arbitration . . . .**  
 25       **Should . . . the court . . . grant[s] relief only after arbitration  
 26 concludes, [the defendant] would be entitled to vacate the  
 27 award and the parties will then have to go through the entire  
 28 arbitration process all over again before a different arbitration  
 panel.**

---

29  
 30 disqualification is "conclusive" but the AAA "will abide by an order issued  
 31 by the courts . . . ."

1       *Metropolitan Property and Cas. Ins. Co. v. J.C. Penney Cas. Ins. Co.*, 780 F. Supp.  
 2       885, 894 (D. Conn. 1991) (emphasis added); *accord* D&O at 8, TMGM 251.  
 3       Removing Arbitrator Hare now would make good legal and policy sense  
 4       considering no discovery or merits hearings have taken place in arbitration.

5       **2.       The Majority of the Original 20 *Sussex* Arbitration  
 6       Claimants Have Declared Their Support for Pre-award  
 7       Removal of the Arbitrator.**

8       When the Nevada Supreme Court ordered the *KJH* plaintiffs to  
 9       file an answer to Turnberry/MGM's petition for writ of mandamus, all 160  
 10       of them—including 12 of the original 20 *Sussex* claimants—unilaterally  
 11       "agreed" to de-consolidate the 545-claimant mass *Sussex* arbitration they had  
 12       requested and obtained six months earlier. They endorsed removal of  
 13       Arbitrator Hare and the appointment of a new arbitrator, but just for them.  
 14       Their objective was opportunistic gamesmanship: to prevent the Nevada  
 15       Supreme Court from addressing the merits of Turnberry/MGM's writ  
 16       petition, which the Court had deemed of "arguable merit" and to which  
 17       these 160 plaintiffs had no substantive response.

18       The attorneys for the 160 *KJH* plaintiffs, who represent *all* the 545  
 19       claimants in the *Sussex* arbitration, cannot rationally explain why 12 of the  
 20       20 original *Sussex* claimants should proceed before another but unbiased  
 21       arbitrator while 8 of them (the plaintiffs before this Court) and  
 22       Turnberry/MGM remain before biased Arbitrator Hare. The Arbitrator's  
 23       own words and actions have established that he is evidently partial to the  
 24       plaintiffs and biased against Turnberry/MGM. For this reason he should  
 25       not preside over *any* case in which Turnberry/MGM is a defendant and  
 26       should be disqualified in all.

**B. The Arbitrator Failed to Disclose Material Facts that a Reasonable Person Would Consider Likely to Affect His Impartiality.**

NRS 38.227 provides, in relevant part:

1. Before accepting appointment, an . . . arbitrator . . . shall disclose to all parties to the agreement to arbitrate and arbitral proceeding. . . *any known facts that a reasonable person would consider likely to affect the impartiality of the arbitrator in the proceeding. . .*

• • •

2. An arbitrator has *a continuing obligation* to disclose to all parties to the agreement to arbitrate and arbitral proceeding and to any other arbitrators any facts that the arbitrator learns after accepting appointment which a reasonable person would consider likely to affect the impartiality of the arbitrator.

NRS 38.227(1)-(2) (emphasis added).<sup>7</sup>

The AAA Commercial Arbitration Rules ("AAA Rules") provide likewise: "Any person appointed . . . as an arbitrator shall disclose . . . any circumstance likely to give rise to justifiable doubt as to the arbitrator's impartiality or independence" and "[s]uch obligation shall remain in effect throughout the arbitration." AAA Rule R-16(a) (emphasis added). TMGM 460-61.

Although both NRS 38.227 and AAA Rule R-16 include examples of circumstances and relationships to be disclosed, by their terms these provisions are not limited to those relationships and circumstances

<sup>7</sup> Where, as here, the arbitration agreement provides for the application of Nevada law, the substantive law of the Nevada Uniform Arbitration Act applies. It is not preempted by the Federal Arbitration Act ("FAA") because it does not undermine the FAA's goals. *Volt Info. Sciences, Inc. v. Bd. of Trustees of Leland Stanford Junior Univ.*, 489 U.S. 468, 477-78 (1989)). Nevada law, including its disclosure rules in NRS 38.227, does not frustrate the FAA's policies and goals: Nevada law promotes arbitration by *neutral* arbitrators to ensure that arbitration is fair and efficient by requiring arbitrators to make relevant disclosures "at the outset." *Commonwealth Coatings Corp. v. Cont'l Cas. Co.*, 393 U.S. 145, 151, 89 S. Ct. 337, 340 (1968).

1 and can include "*any*" fact or circumstance that a reasonable person would  
2 consider likely to affect the impartiality of the arbitrator. These broad  
3 disclosure requirements serve important policies meant to ensure fairness  
4 and integrity in the arbitral process. As the United States Supreme Court  
5 remarked in a seminal case, "it is far better that the relationship be disclosed  
6 at the outset, when the parties are free to reject the arbitrator or accept him  
7 with knowledge of the relationship and continuing faith in his objectivity,  
8 than to have the relationship come to light after the arbitration, when a  
9 suspicious or disgruntled party can seize on it as a pretext for invalidating  
10 the award." *Commonwealth*, 393 U.S. at 151, 89 S. Ct. at 340.

11 The Ninth Circuit has held that evident partiality exists when  
12 "undisclosed facts show a *reasonable impression* of partiality." *Schmitz v.*  
13 *Zilveti*, 20 F.3d 1043, 1046 (9th Cir. 1994). "[A]n arbitrator's nondisclosure of  
14 facts showing a potential conflict of interest creates evident partiality . . .  
15 even when no actual bias is present." *Id.* at 1045 (emphasis added); *accord New*  
16 *Regency Prods., Inc. v. Nippon Herald Films, Inc.*, 501 F.3d 1101, 1105 (9th Cir.  
17 2007) ("'Evident partiality' is distinct from actual bias"). Nevada law is no  
18 different: "*In nondisclosure cases, evident partiality is established from the non-*  
19 *disclosure itself*, regardless of whether the undisclosed information  
20 establishes partiality or bias." *Thomas v. City of North Las Vegas*, 122 Nev. 83,  
21 98, 127 P.3d 1057, 1068 (2006) (internal quotation marks and citation omitted,  
22 emphasis added) ("*Thomas*").

23 "Showing a 'reasonable impression of partiality' is sufficient in a  
24 nondisclosure case because the policy of [the FAA's] section 10(a)(2)  
25 instructs that the parties should choose their arbitrators intelligently."  
26 *Schmitz*, 20 F.3d at 1047 (quoting *Commonwealth Coatings*, 393 U.S. at 151, 89  
27 S. Ct. at 340 (White, J., concurring)). "The parties can choose their arbitrators  
28 intelligently only when facts showing potential partiality are disclosed."

1 *Schmitz*, 20 F.3d at 1047. Turnberry/MGM could not choose its arbitrator  
 2 intelligently because Arbitrator Hare failed to disclose several facts known  
 3 personally to him that a reasonable person would consider likely to affect  
 4 his impartiality. Under NRS 38.241(1)(b), *Thomas* and *Schmitz, supra*, these  
 5 non-disclosures will, as a matter of law, require the Court to vacate any  
 6 award he may hereafter enter.

7 **1. Bowdoin Street Capital—Hare's Investment Vehicle to**  
 8 **Fund Plaintiffs' Litigation Against Corporations, such as**  
**Turnberry/MGM and its Co-defendants.**

9 On February 16, 2011, while presiding over the *Sussex*  
 10 arbitration, Arbitrator Hare founded Bowdoin Street Capital, LLC, in  
 11 Delaware ("Bowdoin"). TMGM 42.<sup>8</sup> The website he established for the  
 12 company says: "Bowdoin Street Capital, LLC invests in *high-value*, high-  
 13 probability *legal claims and litigations*" and "believe[s] that this approach will  
 14 generate significant returns." TMGM 169 (emphasis added). Bowdoin's and  
 15 the arbitrator's stated goal is to invest in the litigation of mass claims and  
 16 profit from that investment by sharing in the recovery from corporate  
 17 defendants, such as Turnberry/MGM and the other corporate parties  
 18 named as defendants in this case. "In addition [Arbitrator Hare says on  
 19 Bowdoin's website], we assist claimholders and their counsel in the  
 20 advancement and resolution of claims and litigations" such as by loans, "to  
 21 be repaid only if the litigation proves successful." *Id.*

22 But Arbitrator Hare's Bowdoin website goes further: it touts his  
 23 experience as a "neutral in many large complex commercial arbitrations with  
 24 claims ranging from \$20 to \$200 million. . . ." TMGM 168. Thus, Bowdoin  
 25 Street Capital and Arbitrator Hare link his services as an arbitrator in high-  
 26 value multi-party commercial cases (such as this Signature arbitration) to his

27  
 28 <sup>8</sup> A timeline of the Arbitrator's appointment and his non-disclosures put in  
 context of the arbitration proceedings is attached in chart form in the  
 Appendix at TMGM 509-12.

1 qualifications as a principal in Bowdoin's litigation funding business.  
2 Conversely, at no time during 2011 and 2012 did Arbitrator Hare disclose to  
3 the parties in this arbitration his new personal business interest and his  
4 activities to raise money (his goal was \$50 million) to invest in and profit  
5 from financing mass claimants' litigation of the same type as this 545-party  
6 multi-million dollar litigation against Turnberry/MGM.

7 These are facts every reasonable person or corporation being  
8 sued by hundreds of claimants for alleged securities fraud, common law  
9 fraud, and consumer fraud, such as Turnberry/MGM and its co-defendants,  
10 would like to know and by statute—NRS 38.227—are entitled to know *before*  
11 being asked to accept Brendan Hare as their "neutral" arbitrator in this  
12 multi-million dollar arbitration. Given his desire to raise money to fund and  
13 profit from plaintiffs' litigation like this, and assist plaintiff law firms like  
14 those in this case, any objective reasonable person would conclude that  
15 Mr. Hare has an incentive to *favor plaintiffs* in his "high value" arbitrations  
16 because that would further his personal business interest in establishing  
17 himself among plaintiff law firms.

18 **2. Arbitrator Hare's Undisclosed Participation in Two New  
19 York Litigation Finance and Investment Seminars While  
20 Serving as a "Neutral" in the Signature Arbitration.**

21 In April 2011, Arbitrator Hare appeared as a presenter at a  
22 "Litigation Finance & Investment Summit" held in New York City, where he  
23 and his co-presenters—all members of firms engaged in financing plaintiffs'  
24 litigation—were held out as "funds, institutional investors and other  
25 potential investors. . . ." TMGM 71. By this means Arbitrator Hare sought to  
26 build his reputation in the litigation funding community, which provided a  
27 strong and continuing incentive to favor plaintiffs in arbitrations before him,  
28 including this one.

1                   In March 2012, Arbitrator Hare was again a presenter at a  
 2 "Commercial Litigation Funding & Investment Summit" in New York,  
 3 where his law firm, Hare & Associates, was touted as one of the "Industry  
 4 Leaders in this Dynamic Market [of] Commercial Litigation Funding and  
 5 Investment." TMGM 137. In his PowerPoint presentation for this seminar,  
 6 Mr. Hare told his audience that the USA is "filled with potential" for  
 7 litigation funding because, among other reasons, it is the most "litigious  
 8 country in the . . . world," with "90% of U.S. corporations engaged in some  
 9 type of litigation." TMGM 112. Mr. Hare told his audience that the first key  
 10 to success in litigation funding is "sourcing cases" through

- 11                   **(1) Key professionals with experience in litigation and**  
                          **litigation management;**
- 12                   **(2) Experience concentrated in high value disputes in**  
                          **technology, corporate, contract, insurance, intellectual**  
                          **property, personal injury and class actions;**
- 13                   **(3) Extensive nationwide network of contacts (litigators, in-**  
                          **house counsel, experts, industry leaders) to access cases; and**
- 14                   **(4) Relationships with large firms and litigation boutiques.**

15                   TMGM 128 (emphasis added).

16                   Mr. Hare's own words emphasize the importance to him of  
 17 building his reputation within the plaintiffs' bar in order to gain access to  
 18 litigations that need funding. In this *Sussex* arbitration, the claimants are  
 19 represented by at least three different experienced law firms with offices in  
 20 Nevada, California, and Florida. Mr. Gerard and Mr. Blumenthal are both  
 21 seasoned plaintiffs' and class action attorneys. *See, e.g., Rocker v. KMPG LLP,*  
 22 122 Nev. 1185, 148 P.3d 703 (2006) (class plaintiffs represented by  
 23 Mr. Gerard and Mr. Blumenthal); *Truly Nolen of America v. Superior Court,*  
 24 208 Cal. App. 4th 487, 145 Cal. Rptr. 3d 432 (2012) (Mr. Blumenthal  
 25 representing plaintiffs in a class action). It would facilitate creating a  
 26 "nationwide network of contacts" among law firms experienced in plaintiffs'  
 27  
 28

1 and class action work if the arbitrator sides with the 545 claimants in this  
 2 case. Given Mr. Gerard and Mr. Blumenthal's extensive experience, they  
 3 would be excellent sources for future business even if the Arbitrator is not  
 4 funding this case and has no direct interest in its outcome.

5 These undisputed *facts* inescapably show that Mr. Hare has a  
 6 strong, personal financial interest in developing his reputation among the  
 7 very counsel for plaintiffs for whom he is now serving as a "neutral"  
 8 arbitrator. Again, these facts would give a reasonable objective person in  
 9 Turnberry/MGM's position reason to doubt Arbitrator Hare's impartiality  
 10 in arbitrating a dispute brought on behalf of hundreds of claimants seeking  
 11 millions of dollars from Turnberry/MGM.

12 **C. The Undisclosed Facts Establish Brendan Hare's Evident  
 13 Partiality, as a Matter of Law.**

14 "In nondisclosure cases, evident partiality is established from the  
 15 non-disclosure itself, regardless of whether the undisclosed information  
 16 establishes partiality or bias." *Thomas*, 122 Nev. at 98, 127 P.3d at 1068. All  
 17 that needs to be demonstrated is that the "undisclosed facts show a  
 18 reasonable impression of partiality." *Schmitz*, 20 F.3d at 1047. Once evident  
 19 partiality is established, as it has been here, there is no room for discretion:  
 20 The arbitrator's award *must* be vacated. NRS 38.241(1)(b).<sup>9</sup>

21 **1. Evident Partiality May be Based on an Indirect Positional  
 22 Conflict that Causes a Reasonable Person to Question the  
 23 Arbitrator's Loyalty.**

24 Evident partiality is not limited to a direct relationship with one  
 25 of the parties or their counsel, or to a financial interest in the outcome of the  
 26 arbitration. *See, e.g., Benjamin, Weill & Mazer v. Kors*, 125 Cal. Rptr. 3d 469,

27 <sup>9</sup> Under 9 U.S.C. § 10, the federal counterpart of NRS 38.241, a court "may"  
 28 vacate an award on this basis. Again, the FAA does not preempt Nevada  
 law on this point either because the mandate under NRS 38.241 does not  
 frustrate the goals of arbitration; it merely ensures fairness of the arbitration.

1 496 (Cal. App. 2011) (finding evident partiality based on arbitrator's failure  
 2 to disclose his practice of defending lawyers and law firms in arbitration  
 3 involving attorney fee dispute); *Advantage Med. Services v. Hoffman*, 72 Cal.  
 4 Rptr. 3d 935, 943 (Cal. App. 2008) (finding evident partiality based on the  
 5 arbitrator's failure to disclose his and his law firm's ties in unrelated cases to  
 6 the insurance company of the prevailing party).

7       Although not binding on this Court, the opinion in *Kors* is  
 8 particularly instructive here, as it was to Judge Denton in the *KJH* action.  
 9 D&O at 3-4, 9-10, TMGM 247-48, 253-54. In *Kors*, the chief arbitrator of a  
 10 three-member panel presided over a billing dispute between a former client  
 11 and a law firm, wearing his "neutral" arbitrator's hat. *Kors*, 125 Cal. Rptr. 3d  
 12 at 490. He had no relationship with any of the parties or their counsel.  
 13 However, wearing his other hat as practicing lawyer, his legal practice  
 14 focused on representing lawyers and large law firms in professional  
 15 responsibility disputes, including fee disputes. *Id.* At the time he was  
 16 appointed chief arbitrator, he was also representing a large law firm before  
 17 the California Supreme Court in a case involving an attorney fee dispute. *Id.*  
 18 at 51, 125 Cal. Rptr. 3d at 477. On his website, he advertised, among other  
 19 things, that attorneys facing charges of misconduct "often turn to [him]" and  
 20 that

21       [h]is business litigation background and extensive experience  
 22 with the unique issues and dynamics involved in claims against  
 23 lawyers allow him to provide effective representation of his  
 24 clients, which include some of the nation's largest law firms.

25 *Id.* at 51, 125 Cal. Rptr. 3d at 477-78 (internal quotations omitted). He was  
 26 disqualified and his award vacated for not disclosing these facts.

27       Similarly here, Arbitrator Hare advertises in his LinkedIn  
 28 internet profile that he has "refocused his practice to concentrate on the  
 emerging field of Litigation Finance and Funding." TMGM 171. His

1 Bowdoin website advertises that his company invests in "high-value, high-  
 2 probability legal claims and litigations" and assists "claimholders and their  
 3 law firms. . . ." TMGM 169. At the same time he is wearing a "neutral"  
 4 arbitrator hat in this arbitration, he is actively seeking millions of dollars as  
 5 businessman-investor Brendan Hare to invest in and profit from mass  
 6 litigation of the type before him in this consolidated arbitration against  
 7 corporate defendants, just like Turnberry/MGM. In doing so, he is holding  
 8 out his experience as a neutral arbitrator as an asset to his litigation funding  
 9 business!

10 Moreover, Arbitrator Hare is not one of three arbitrators, as in  
 11 *Kors*; he is the sole arbitrator presiding over this consolidated mass  
 12 arbitration, in which he exercised his "inherent authority" and allowed  
 13 joinder of 13,080 claims of 545 claimants in a single arbitration case as a  
 14 matter of "procedure" derived from his "inherent authority." TMGM 155.

15 **2. A Reasonable Person Could Conclude that Arbitrator  
 16 Hare's Dependence on Business From Plaintiffs' Law  
 17 Firms to Further His Personal Financial Interests Would  
 18 Prevent Him From Taking the Side of Turnberry/MGM.**

19 In *Kors*, the court concluded that "a reasonable person [could]  
 20 doubt whether [the arbitrator]'s dependence on business from lawyers and  
 21 law firms sued by former clients would prevent him from taking the side of  
 22 a client in a fee dispute with a former law firm, *because doing so might 'put at*  
 23 *risk' his ability to secure business from the lawyers and law firms whose business he*  
 24 *solicits.*" 125 Cal. Rptr. 3d at 494 (emphasis added)(quoting from and relying  
 on rationale of *Hoffman*, 72 Cal. Rptr. 3d at 944)).

25 The same can be concluded here: A reasonable person could  
 26 easily and reasonably conclude that Arbitrator Hare's dependence on  
 27 business from plaintiffs' lawyers and plaintiffs' law firms for his new  
 28 litigation funding business would prevent him from taking the side of

1 Turnberry/MGM in this mammoth *Sussex*-Signature arbitration, because  
2 doing so "might 'put at risk' his ability to secure business from the lawyers  
3 and law firms whose business he solicits." *Id.* If the arbitrator ruled against  
4 the claimants in this large complex commercial arbitration, it could put at  
5 risk his ability to establish relationships with and secure business from  
6 plaintiffs' counsel and other plaintiffs' law firms. The Arbitrator's own 2012  
7 PowerPoint presentation underscores this point. He emphasizes that an  
8 "extensive nationwide network" of contacts and relationships with litigators  
9 and law firms to "access cases" is one of the "Keys to Success in Litigation  
10 Funding." TMGM 128.

11 Arbitrator Hare should have disclosed in 2011 his litigation  
12 funding business, the change in the focus of his practice, and his active  
13 efforts to raise money to promote his new business at litigation fund-raising  
14 seminars. His complete failure to do so then and thereafter defeats his  
15 presumed "neutrality," as a matter of law, because a reasonable person  
16 would doubt his ability to be impartial in this *Sussex*-Signature arbitration.  
17 *Schmitz*, 20 F.3d at 1046 (evident partiality exists when "undisclosed facts  
18 show a *reasonable impression* of partiality").

#### 19 IV. CONCLUSION

20 The *Sussex*-Signature arbitration presents an extreme case in  
21 which the Court can and should intervene to override the AAA's  
22 unexplained determination that Arbitrator Hare is qualified to serve as a  
23 "neutral" arbitrator for thousands of claims against Turnberry/MGM. His  
24 evident partiality has been conclusively established as a matter of law.  
25 Prolonged arbitration proceedings with him at the helm—whether he is  
26 presiding over 545 claimants or "just" 385 of them—would be wasteful  
27 because his future award must be vacated for evident partiality under  
28 NRS 38.241, which would require the parties to start over. This inevitable

1 prospect of a do-over arbitration cannot be avoided by some of the plaintiffs  
2 in arbitration—the 160 *KJH* plaintiffs— withdrawing from the *Sussex*  
3 arbitration to seek an independent neutral arbitrator while the remainder  
4 (385 claimants drawn from the 8 plaintiffs in this *Sussex* case and the 397  
5 plaintiffs in *Abraham* case before Judge James Mahan) remain to arbitrate  
6 against Turnberry/MGM with disqualified Arbitration Hare whose bias  
7 against this defendant has been confirmed by the *KJH* plaintiffs and their  
8 common counsel. Brendan Hare should be disqualified now, *in toto*, as 160  
9 *KJH* plaintiffs—including the majority of the original 20 *Sussex* claimants—  
10 have already requested for themselves.

11 Because of the novelty of the question presented by this Motion  
12 and the unprecedented facts, oral argument would be of assistance to the  
13 Court and the parties.

14 MORRIS LAW GROUP  
15

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## CERTIFICATE OF SERVICE

Pursuant to Fed. R. Civ. P. 5(b) and Section IV of District of Nevada Electronic Filing Procedures, I certify that I am an employee of MORRIS LAW GROUP, and that the following documents were served via electronic service: **MOTION FOR AN ORDER DECLARING THAT ARBITRATOR BRENDAN HARE IS DISQUALIFIED FOR HIS FAILURE TO MAKE REQUIRED DISCLOSURES UNDER NRS 38.227 THAT ESTABLISH HIS EVIDENT PARTIALITY AND REQUEST FOR ORAL ARGUMENT**

TO:

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DATED this 11th day of September, 2013.

By: /s/ PATRICIA FERRUGIA